Department of Housing and Community Development Initial Statement of Reasons (ISOR) Federal Emergency Shelter Grants Program

The following Initial Statement of Reasons (ISOR) provides the conceptual and factual basis for the necessity of the state regulations contained in the rulemaking proposal for the Federal Emergency Shelter Grants Program (FESG), a grant program to provide temporary housing and related services for homeless people in FESG-eligible communities, as defined under State regulations.

Congress appropriates money annually to the Department of Housing and Urban Development (hereafter referred to as HUD) for the Emergency Shelter Grants (ESG) program. HUD, in turn, allocates this money to Urban Counties, Metropolitan Cities, and States pursuant to Chapter 42 United States Code section 11373. States, in turn, must make this money available to nonprofit organizations and Units of local government in the State pursuant to Chapter 24 Code of Federal Regulations Section 576.25.In California this is done through the State FESG program.

This regulatory package addresses how the State of California will administer its share of FESG funds. It is based on the ESG statute, 42 USC Sections 11371 through 11378, (effective July 22, 1987), and federal regulations, 24 CFR Part 576, (effective November 1, 1996). It also incorporates by reference 24 CFR Parts 84 and 85, and 24 CFR Part 58.

The Department drafted these regulations so that they were not inconsistent with prevailing federal or state law. Applicable state law shall prevail over conflicting provisions of the FESG Program Regulations. Applicable federal statutes and applicable federal regulations shall prevail over conflicting provisions of the FESG Program Regulations.

This regulatory package is also based in part on the State's own Emergency Housing and Assistance Program (EHAP) statute Chapter 11.5 of the Health and Safety Code, Sections 50800-50806.5, (effective October 11, 1993), and regulations at 25 CCR 7950-7976. In preparing the state FESG regulations, the Department of Housing and Community Development, (hereafter referred to as the Department), is drawing on over ten years of experience it has administering the FESG program, as well as ten years experience administering EHAP.

This experience also includes continuous interaction with local shelter providers and other interested parties regarding FESG policy issues. In particular, before beginning the process of drafting these regulations, the Department surveyed over 100 housing facilities or organizations that have received FESG funds to get feedback on the kinds of issues that need to be changed as part of these regulations. The survey had a 30% response rate. In addition, the Department held two focus groups where survey respondents from both Northern and Southern California provided specific feedback on regulatory ideas

developed by the Department. A total of nine organizations participated in the focus groups.

The ISOR accompanies proposed State regulations that are substantially the same in some areas as the EHAP regulations. This was done in an attempt to streamline the two programs as much as possible. However, where differences exist between the federal rules governing FESG and the State EHAP, the State FESG regulations reflect the prevailing federal rules.

The Department acknowledges that some duplication between State FESG regulations and federal FESG law and regulations exists in this rulemaking proposal. This has been done where it seems necessary for the public and providers of services to the homeless to clearly understand the State regulations. For each major regulation, a statement is provided on the purpose of the proposed regulation, as well as the necessity or rationale behind the proposal. Appropriate references to the code section being clarified, interpreted, or implemented are listed.

Section 8401 Definitions

The terms used in the FESG regulations must be clearly defined and must be readily accessible to ensure that providers of homeless services and other interested parties can interpret them accurately and consistently. Precise definitions reduce ambiguity about FESG requirements, and reduce staff time spent defining or interpreting regulations for applicants and recipients of FESG funds.

For clarity in reading and understanding the regulations, Section 8401 defines several of the terms and acronyms whose meanings are unique to the FESG program or that otherwise may be unfamiliar. Some of the definitions come from the federal FESG regulations and are included in the State regulations as a convenience to the reader. Other definitions come from the EHAP regulations because they have worked well in that program, and because the Department would like to make the two programs similar where possible. The following is a brief explanation of the necessity behind some of the definitions that are unique to both the FESG program and the EHAP program.

"Day Center" is defined as a Facility or Program whose primary purpose is to provide temporary shelter during the day as well as to offer a wide range of services to large numbers of homeless persons on any given day that may include, but is not limited to, food services, clothing services, employment services, case management services, and addiction recovery support services. Day Centers do not regularly provide overnight shelter accommodations. Day Centers do not include child care centers or outpatient medical treatment or recovery centers. The Department is defining this term to provide clarity regarding what kinds of Facilities or Programs will be considered "Day Centers" for purposes of these FESG regulations. This definition also impacts how an application will be grouped for purposes of rating the program outcome and cost efficiency factors in Section 8411 of the regulations. For these rating factors, Day Center Programs will only be compared with other Day Center Programs.

The Day Center definition is intended to apply to all Facilities or Programs that provide shelter to large numbers of homeless persons during the day, along with support services such as food, clothing, employment, and addiction recovery services for the purpose of helping individuals address their basic needs as well as some of the root causes of their homelessness. For some individuals these services may help them exit the streets for emergency, transitional, or permanent housing.

For purposes of this definition, Day Centers do not include child care facilities. Child care for homeless children is an eligible Essential Service pursuant to 24 CFR 576.3, however, child care facilities are not intended to be homeless shelter facilities, although they may serve some children who are homeless. For purposes of rating and ranking applications for FESG funding, child care programs providing services to homeless children will be treated as non-housing Programs if these child care services are not being provided as part a housing Program for which FESG funds are also being requested. (See Grant Selection Process in Section 8411.) Consistent with 24 CFR 576.1, applicants providing child care services to both homeless and non-homeless children will only be funded proportionate to the number of homeless children being served.

For purposes of this definition, Day Centers also do not include outpatient medical treatment or recovery centers. Medical and psychological counseling and supervision provided to homeless persons as well as substance abuse treatment and counseling provided to homeless persons is an eligible Essential Service pursuant to 24 CFR 576.3. For purposes of FESG rating and ranking, these services will be treated as non-housing Programs if they are not being provided as part a housing Program for which FESG funds are also being requested. (See Grant Selection Process in Section 8411.) Consistent with 24 CFR 576.1, applicants providing these services to both homeless and non-homeless persons will only be funded proportionate to the number of homeless persons being served.

"Eligible City" is defined as a City that within the current federal fiscal year meets one of the following conditions: it is located within a county that is a Nonentitlement area pursuant to 42 USC 5302; it is a Metropolitan City that receives no federal ESG funds directly from HUD pursuant to 42 USC 11373; it is a City that is located within an Eligible county and is not a Metropolitan City or it is a City that is not a Metropolitan City and is also not part of an agreement pursuant to 42 USC 5302 to receive Federal ESG, CDBG and HOME funds as part of the Urban County within which it is located. This definition enables all California cities who are not receiving ESG funds from HUD to receive FESG funds from the State. This definition is consistent with the way the State has made its FESG funds available for several years.

"Eligible county" is defined as a county that within the current federal fiscal year meets one of the following conditions: the county is not an Urban County pursuant to 42 USC 5302(a) (6) or the county is an Urban County that is receiving no federal ESG funds directly from HUD pursuant to 42 USC 11373. This enables all California counties who are receiving no ESG funds from HUD directly to receive FESG funds from the State. This definition is consistent with the way the State has made its FESG funds available for several years.

"Emergency Shelter" This definition is taken in part from the EHAP program and expanded to include day centers since day centers are permitted under the federal ESG regulations and are a regularly funded activity in the State's current FESG program. This definition is similar to the definition in the federal regulations, (24 CFR 576.3), but does

not include Transitional housing. The requirements for Transitional housing are set forth in Section 8406 of the State FESG regulations. Transitional housing is defined at Section 8401.

"Northern California Allocation Region" This definition is necessary to denote, in any particular year, what counties in Northern California with a population of 200,000 or more qualify as counties that are included in the Northern California set-aside described in Section 8402 of the FESG Regulations. The Northern California Allocation Region is comprised of all counties in the state north of San Luis Obispo, Kern, and San Bernardino counties. Each county must have a population of 200,000 or more, and must have within its boundaries one or more Eligible Cities. The 200,000 population threshold is consistent with the urban county threshold in the EHAP program. The requirement that counties within this region have within their boundaries one or more FESG-Eligible cities is consistent with the current Department requirements for the FESG program.

"Site" for purposes of Capital Development activities means a given parcel or contiguous parcel(s) of land developed, or to be developed, with Emergency shelter and/or Transitional housing. Under this definition, a Site can be a single parcel of land or two or more parcels of land that are next to one another.

There may be situations where two or more separate but contiguous parcels are dependent upon one another. This may occur if a structure or other improvement overlaps a boundary of each of the parcels, (a building overlapping two parcels, for example). It may occur if a structure or other improvement that is completely on one parcel is not useful unless the other parcel is included with it, (a housing facility is on one parcel and the driveway to the housing facility is on another parcel, for example). In situations such as these where a dependency of the contiguous parcels exits, the contiguous parcels would be considered one Site and the Department may require that the parcels be merged into one parcel so that if the property has to be sold, as part of a foreclosure sale or otherwise, it can be sold as one legal parcel. This is consistent with the Department's requirement at Section 8409 (f) (3) for protection of its security interest.

Conversely, in a situation where two or more contiguous parcels support independent housing projects, each parcel would be considered a Site.

In situations where a single housing program is carried out using several parcels of land, either contiguous or separate from one another but whose improvements are independent of one another, each parcel would be considered a Site. Thus, in the example of a "scattered site" housing program in five locations, each of the five locations or parcels would be considered a Site.

This definition does not prevent an applicant from making multiple applications for Capital Development funds for housing on separate parcels of land that are not next to one another; however, any restriction that may be imposed in the future on the number of Sites that can be included in one application for funds, and on the minimum and maximum grant amount per application or per organization, must be adhered to.

"Site" for purposes of activities that are not Capital Development activities means one or more Facilities where the Program(s) is being carried out.

"Southern California Allocation Region" This definition is necessary to denote, in any particular year, what counties in Southern California with a population of 200,000 or more that qualify as counties that are included in the Southern California set-aside described in Section 8402 of the FESG Regulations. The Southern California Allocation region is comprised of the counties of San Luis Obispo, Kern, and San Bernardino as well as each county in the State to the south of San Luis Obispo, Kern and San Bernardino counties. Each county must have a population of 200,000 or more, and must have within its boundaries one or more Eligible cities. The 200,000 population threshold is consistent with the urban county threshold in the EHAP program. The requirement that counties within this region have within their boundaries one or more Eligible cities is consistent with current Department requirements for the FESG program.

"Rural County Allocation Region" This definition is necessary to denote, in any particular year, what counties qualify as rural counties to be included in the Rural Counties set-aside described in Section 8402 of the FESG regulations. Each county must have a population of less than 200,000 and must have within its boundaries one or more Eligible cities. The 200,000 population ceiling is consistent with the nonurban county threshold in the EHAP program. The requirement that counties within this region have within their boundaries one or more Eligible cities is consistent with current Department requirements for the FESG program.

Section 8402 Allocation of Funds

42 USC section 11373 permits a state receiving ESG funds from HUD to distribute the funds to Units of general local government and private nonprofit organizations in that state. The proposed regulation allocates State FESG funds in the following manner:

Subdivision (a) allocates four percent of available State FESG funds for Department administrative expenses. Four percent administration is permissible under 42 USC section 11378, and is the standard allowable percentage for administrative funds taken by the Department for all of its homeless programs.

Subdivision (b) makes up to 5% of funds available to New Programs in Eligible cities and Eligible counties. To receive an award of funds as a New Program, the following is required. (1) FESG funds must be used for an Eligible activity or group of Eligible activities set forth in section 8406. (2) The Program must have been operating for less than two years from the date of the applicable NOFA and; (3) the organization applying for the funds must not have received either state FESG or EHAP funds in the previous two funding rounds. (This requirement does not preclude New Programs from meeting the requirement at 42 USC 11374(a)(2)(A) which requires that any Essential services for which funds are being requested "may not have been provided [paid for] by the local government in the immediately preceding 12 month period". See subdivision 8406(a) (1) (xii) for further clarification.

The Department would like to do more to foster the development of New Programs with FESG funds. The Department estimates that it currently funds only one-third of the shelters in Eligible cities and counties across the state. This set-aside provides an incentive to organizations that have never applied for FESG funds or that have not received FESG funds in the previous two funding rounds. If in any given year less than the total amount of this set aside is awarded, the remainder of the funds in the set-aside will be distributed in the general allocation pursuant to subdivision 8402(c)(4).

Subdivision 8402 (c) allocates the remainder of the available state funds to three regional allocations for distribution by competition, and one general allocation out of which applicants not funded out of the Regional or New Programs allocations can be funded on a competitive basis. Subdivision 8402 (c) (1) makes approximately 33% of the annual FESG allocation available on a competitive basis to Programs in the Northern California Allocation Region. Subdivision 8402 (c) (2) makes approximately 24% of the annual FESG allocation available on a competitive basis to Programs in the Southern California Allocation Region. Subdivision 8402 (c) (3) makes approximately 19% of the annual FESG allocation available on a competitive basis to Programs in the Rural County Allocation Region. Subdivision 8402 (c) (4) makes the remaining amount of the State FESG allocation, and any unawarded FESG funds from the regional and New Program set-asides, available to Eligible organizations for Programs in Eligible cities and counties statewide that have not ranked high enough to be funded out of the other applicable set-The word "approximately" is used in each of the subdivisions to address situations in any given year where it is necessary to round up to the nearest whole dollar to avoid Grant awards of dollars and cents.

The Department chose to develop regional set-asides in order to operate a more fair competition among all applicants for FESG funds by (1) guaranteeing that each region of the state will receive a certain minimum percentage of FESG funds each year if those funds are requested, and (2) by narrowing the field of competition so that an organization's first opportunity to secure funds is enhanced by only having to compete against other organizations in their area of the state. The amount of each regional setaside is based, in part, on the amount of demand for State FESG funds in the region as represented by the total amount of State FESG funds applied for in the region in the funding years 2000-2002. The Department felt that basing regional allocations on the total applied for in the region was the fairest way to ensure that, at a minimum, each region would be allocated an amount of State FESG funds proportionate to what it has typically demanded from the FESG Program. The regional allocations are derived from a formula analysis, (detailed below), of the percentage of funding applied for in each of the three regions, (Rural, North, and South), in the 2000-2002 funding years. These years are used as a basis for determining the present allocation system because they are the years for which data on demand for State FESG funds is available.

The general allocation set-aside provides unfunded Programs with a second opportunity to secure funds according to how their application score ranks against other unfunded applicants statewide. Having a portion of funds available to all unfunded Programs also allows every region to secure additional FESG dollars based on the strength of individual applications submitted from the region that particular year, rather than just based on historical FESG funding levels for the region. The percentage of funds available for

general allocation was established as 15%. This percentage was chosen because it seemed a reasonable percentage to leave available given the desire to have both regional allocations and a set-aside for New Programs, as well as the need to allow for Department administrative costs.

Formula:

Regional Allocation =

Regional Total Dollar Amount Applied for in State FESG funds for the 2000, 2001, and 2002 funding rounds

divided by

Statewide Total Dollar Amount Applied for in State FESG funds for the 2000, 2001, and 2002 funding rounds

multiplied by

100% minus Department Admin minus Percentage for New Programs minus Percentage for General Allocation

Data:

Total Dollar Amount Applied for in State FESG funds for the 2000, 2001, and 2002 funding rounds

\$31,485,314

Rural Regional Total Dollar Amount Applied for in State FESG funds for the 2000, 2001, and 2002 funding rounds

\$8, 021, 62

Northern California Regional Total Dollar Amount Applied for in State FESG funds for the 2000, 2001, and 2002 funding rounds

\$13,582,632

Southern California Regional Total Dollar Amount Applied for in State FESG funds for the 2000, 2001, and 2002 funding rounds

\$ 9,881,055

Department Administration

4%

Percentage for New Programs

5%

Percentage for General Allocation

15%

<u>Multiplier</u>

100% - 4% - 5% - 15% = 76% or .76

Regional Allocations Based on Formula

Rural

8,021,627 divided by 31,485,314 .25 x.76 = .19

Northern California

13,582,632 divided by 31,485,314 = .43 .43 x .76 = .33

Southern California 9,881,055 divided by 31, 485, 314= .31 .31 x.76 = .24 24%

Other Alternatives Considered

Current Allocation Method In developing these regulations, the Department considered several other allocation methods. The first was to retain the current allocation method. The current method is a statewide open competition with several limitations on how much money individual FESG eligible cities and individual applicants can receive. The present system limits Programs located in or serving eligible cities to \$340,000. Fifty (50%) of FESG survey respondents who provided feedback on this issue feel that these locality limits do not reflect differences in size among geographic areas, numbers served with FESG funds, or the actual costs of providing services, particularly when an agency is seeking to expand services or is located in a high cost area (July 2001 survey results). The \$340,000 locality limit also effectively locks local agencies into a competition with one another for a very limited amount of funds. Two survey respondents noted that the current locality limits also discourage agencies from consolidating with one another to reduce administrative costs. Instead, Programs serving the same Clients operate as separate organizations in order to continue alternating with one another in applying for their locality's \$340,000 limit as a two-year Grant. Likewise, focus group participants favored the idea of competing on a regional or multi-county basis for over \$1,000,000 per year rather than competing on a city-wide basis for only \$340,000 per year (December 2001 focus group comments).

Under the current allocation system, the amount of funding an applicant can receive is also restricted by a per bed limit. Applicants for one-year Grants receive \$1,800 per bed. Applicants for two-year Grants receive \$3,400 per bed. This amounts to less than \$5.00 per bed per night. As with the locality limits, State recipients who provided the Department with feedback on this issue felt that the per-bed limits did not reflect the actual costs of providing services, particularly for Programs that sheltered small numbers of people but provided a lot of intensive supportive services, such as counseling services provided by licensed psychologists or psychiatrists, or Programs where staff to client ratios are smaller in order to provide a more safe and secure housing environment. A per-

bed limit also disadvantages organizations that serve a relatively large number of people throughout the year due to a short duration of services rather than a large number of beds. The Department acknowledges that the number of beds a Program has may not be indicative of either the number of persons the Program is able to serve, or of Program quality. In order to enable Programs to secure funds based on their individual strengths and needs, the proposed allocation system has no per bed limit.

The current FESG allocation system also limits Grants for Homeless prevention funds to one-year Grants of \$40,000. In its annual allocation memo to the Department dated July 20, 2001, HUD clarified that it intends to permit States to treat Homeless prevention programs like all other FESG-eligible Programs by allowing Homeless prevention funds to be expended over a 24-month period rather than a shorter time-period. Hence, these regulations do not restrict Homeless prevention Grants to one-year Grants nor do they restrict Homeless prevention Grants to \$40,000. The Department will continue to enforce HUD's rule restricting States from spending more than 30% of their total allocation on Homeless prevention activities, (42 USC section 11374(a) (4)); however, it will look only to an application's rank order and amount requested in determining when this limit has been met rather than trying to build this limitation into every request for Homeless prevention funds. The Department will fund FESG Programs in rank order as set forth in Section 8411. However, as it moves down the ranking it will track what percentage of funds to be awarded are Homeless prevention dollars. When the 30% ceiling for Homeless prevention awards is reached, the Department will discontinue awarding funds for Homeless Prevention.

Feedback received from our July 2001 survey of FESG recipients indicates that there is support for increasing the amount of funds available for Homeless prevention activities. Approximately, 22% of the survey respondents, (seven agencies), received these funds. Of this group, five agencies felt that Homeless prevention awards should be increased, and/or the Grant period for Homeless prevention funds should be lengthened from one to two years. These respondents felt that the current system of limiting the Grant amount to one-year Grants of \$40,000 was confusing and did not meet the need for these funds given rising rent costs.

EHAP Formula After deciding to develop an allocation method different from the current FESG allocation method, the Department considered using a formula to determine how much money organizations would compete for on a city-wide or county-wide basis. The Department considered using the EHAP formula to determine locality amounts. This formula establishes allocations for all 58 counties using the relative number of persons below the poverty line, and the relative number of persons unemployed in each county. It also distributes 80% of the available funds to counties whose population is equal to or greater than 200,000, and 20% of available funds to counties whose population is less than 200,000.

The Department rejected this allocation method for several reasons. First, FESG funds are only available to organizations serving cities who do not already receive ESG funds directly from HUD or from their county as part of an Urban County agreement. The

Department felt it was not an accurate representation of need to use county-wide unemployment and poverty data as a basis for what individual Eligible cities in that county would be receiving. A second reason for rejecting a statewide formula allocation is that, despite their eligibility for FESG funds, there are some Eligible counties and cities from which there are consistently no applicants for FESG funds, as noted below. Under a county formula allocation system, the Department is concerned that allocations would go unused

Modified EHAP Formula The Department then modified the formula so that it relied only upon poverty and unemployment data from Eligible cities and counties. However after analyzing the final allocation numbers, the Department rejected the idea of a modified formula allocation for two reasons. Among the 31 Eligible rural counties, 19 counties gained money under the formula compared to the current system; however only 6 of the 19 counties have organizations that have actually applied for funds in the 2000-2002 funding rounds. Among the counties with 200,000 people or more, 14 counties gained money under the city data formula compared to the present system. However, 11 of these 14 were ineligible counties with Eligible Cities, meaning that only Eligible organizations serving homeless persons in these cities could apply. Within this pool, 107 cities were eligible for State FESG funds but organizations in only 47 of these cities applied for these funds in the 2000-01 funding rounds.

In addition to concern over having unspent funds, the Department also felt that both the county and city formula outcomes represent such a big change from the distribution of funds under the current system that moving to a formula allocation will not be supported by the majority of FESG program participants.

On the issue of formula versus open competition, FESG focus group participants generally favored having an open competition for funds with safeguards built into the process to ensure some degree of geographic balance and certainty in the distribution of funds (December 2001 Focus Groups). Consequently, the proposed allocation method provides both an element of open competition, and geographic certainty based on regional rather than county allocations.

Subdivision (d) gives the Department the flexibility to determine whether it will accept applications for one-year Grants, two-year Grants, or both, depending on the anticipated amount of the State's ESG allocation from HUD. This flexibility is necessary to better deal with changes in the annual ESG allocation made by Congress.

If feasible, it is the Department's intention to request applications for two-year Grants only. The idea of accepting only two-year Grants was supported by both the Northern California and Southern California focus groups. The focus groups felt that a two-year Grant structure would help agencies achieve greater financial stability, and make it easier for them to do financial planning (December 2001 Focus Groups).

Subdivision (e) gives the Department the flexibility to specify in the annual NOFA the minimum and maximum grant for FESG Grants. This flexibility is necessary to better deal with changes in the annual ESG allocation made by Congress.

Section 8403 Notice of Funding Availability

24 CFR 576.25 states "All of a State's formula allocation, except for administrative costs, must be made available to... Units of general local government in the State... [and] Private nonprofit organizations."

Section 8403 of the proposed regulations provides the necessary detail regarding what is to be included in the State's FESG Notice of Funding Availability (NOFA) for the purpose of awarding FESG funds to Units of general local government and Private nonprofit organizations providing emergency housing and services to the homeless. The information required is the minimum amount of information needed for applicants to understand the types and amounts of funds available, any limitations on FESG awards, and the FESG application process.

Section 8404 Eligible Organizations

24 CFR section 576.61 requires that the "State, territory, Indian Tribe, or unit of local government is responsible for ensuring that its recipients carry out the recipients' emergency shelter grant programs in compliance with all applicable requirements…" Section 8404 of the proposed regulations sets forth the minimum standards under federal and state law that applicants must meet in order to apply for FESG funds.

Consistent with 24 CFR section 576.25 and 24 CFR section 576.21, Subdivision (a) limits eligibility for FESG funds to Units of general local government and Private nonprofit organizations located in or serving an Eligible City or county in California, which provides, or contracts with community organizations to provide, Emergency shelter Programs, Transitional housing Programs, or other Eligible activities.

Subdivision (b) establishes an experience requirement for all FESG-funded Programs with the exception of those Programs funded under the New Programs set-aside pursuant to section 8402 (b). The minimum time period of 12 months experience for year-round shelter operations helps the Department ensure that FESG funds are used efficiently and effectively to meet the identified housing and support service needs. Since Winter Shelter Programs are not provided twelve months a year, the comparable experience requirement for these Programs is the prior Winter Shelter season. Communities that offer Winter shelter typically do so between the months of October through March; however since different geographic regions have different Winter climates, the Department is not going to regulate when Winter Shelter should be provided for the purpose of satisfying the FESG experience requirement.

Subdivision (c) reiterates State and federal laws prohibiting discrimination. This section clarifies the requirements of the Jessie Unruh Civil Rights Act as they relate to arbitrary discrimination in the provision of housing and services.

Section 8405 Eligible Applications

In order to ensure a fair and competitive process as implied by section 8402, the regulations must identify the eligibility criteria upon which applications will be judged.

Subdivision (a) outlines the basic requirements for all applications. The submittal by the deadline in the NOFA is necessary in a competitive program so that applications can be fairly compared and ranked. Submittal to the address given in the NOFA eliminates the excuse that the applicant sent the application elsewhere by mistake and thus should still be considered even if received late. Completeness, as required by Subdivision (b), is necessary because incomplete applications cannot be competitively and fairly evaluated. Certification by the applicant of the accuracy and truthfulness of the information in the application gives applicants the responsibility to ensure their application is accurate and complete, and reduces this burden on the Department.

A resolution by the applicant's Governing Board, (Subdivision (b) (1)), is required to ensure that the Governing Board approved the application and its related obligations should it be funded. An authorizing resolution will facilitate a finding that an agreement between the Department and applicant is binding.

Evidence of site control for an Emergency or Transitional housing facility, (Subdivision (b) (2)), is necessary because without the legal authority to occupy a site, no lawful activities can be undertaken at that site. Furthermore, without site control the activities for which FESG funds are being requested may not be able to be completed within the 24–month contract period, nor may the applicant be capable of satisfying the continued use requirements at 42 USC 11375(c).

Evidence of Local Approval for all FESG-activities, (Subdivision (b) (3)), is required of all nonprofit FESG applicants pursuant to 42 USC section 11373(c). Subparts (i) and (ii) clarify from what local government jurisdiction applicants must obtain this approval depending on whether their project is part of an Eligible City, or the unincorporated area of an Eligible county. This clarification is necessary because applicants sometimes obtain approval from the City when they actually need approval from the county, and viceversa. This clarification will prevent some applications from being declared ineligible because they do not have approval from the correct local jurisdiction.

Documentation of satisfactory match, (Subdivision (b) (4)), is necessary in order to meet HUD's match requirement pursuant to 42 USC section 11375.

Subdivisions (b) (5) and (6) provide some flexibility for the Department to request additional information not specified in the regulations but in the NOFA. This is reasonable given documentation or other changes that may be requested of the

Department by HUD in any given year. Furthermore, any changes made in the NOFA will be applied consistently to all organizations applying under that NOFA.

Section (c) through (e) is necessary to make sure that the applicant is able to meet all of the applicable laws and regulations governing the FESG program.

Section (f) is necessary in a competitive application process so that applications can be fairly evaluated.

Section 8406 General Program Requirements

This section sets forth eligible and ineligible uses of FESG funds. Some provisions may simply restate a federal ESG requirement to convey the basic requirements of the program. Other provisions may clarify or add to federal law governing the program. This section also sets forth other conditions which must be met in order to receive FESG funds.

Subdivision(a)(1)(i) sets the maximum term for FESG Grants at 24 months in order to give applicants maximum flexibility to plan for and spend their FESG dollars when the need arises. This is consistent with HUD's requirement pursuant to 24 CFR section 576.35 that State recipients must spend all of their Grant amounts within 24 months of the date on which the State made these Grant amounts available to the State recipients. In the case of Grants for Homeless prevention activities, HUD issued a memorandum on July 20, 2001 in which it clarified that the intent of section 576.35[a] was and is" to allow States to make available, obligate, and spend their Homeless prevention funds in the same fashion as they do their other ESG funds." Therefore the proposed rule makes no distinction between the maximum term for Homeless prevention Grants and the maximum term for all other FESG Grants.

Subdivision (a) (1) (ii) permits State recipients to spend up to 1% of their Grant on costs associated with Grant administration. Pursuant to 42 USC 11378, HUD permits a recipient of FESG funds to use up to 5% of the annual Grant amount for administrative purposes. This provision also directs States to share the amount available with local governments funded by the State. The proposed regulation permits local governments and nonprofit State recipients to use up to 1% of their Grant amount for FESG Grant administration. This is a reasonable sharing ratio given that the Department has a larger Grant administrative expense than do individual State recipients because of the Department's obligation to award and monitor all State FESG Grants pursuant to 42 USC section 11373 and 24 CFR section 576.61. The Department also permits FESG State recipients to use their Grant on supervisory staff costs as discussed below; therefore, State recipients have additional flexibility to use their FESG funds on administrative costs.

Subdivision (a) (1) (iii) clarifies that the 10% limitation on staff costs set forth in 24 CFR section 576.21 subdivision (a)(3) applies only to supervisory staff costs associated with operating a shelter. This is consistent with the present practice within the State FESG

program, and HUD has said that this is a reasonable interpretation of the federal requirement. This interpretation enables State recipients to spend an unlimited amount of their FESG Grant on the costs of staff providing services directly to homeless or at-risk homeless persons, (whether within shelter Operations, Essential services, Homeless prevention, or Capital Development activities), and up to 10% of their Grant funds on supervisory shelter administrative costs. This is separate and distinct from the 1% for costs specific to the administration of the FESG Grant permitted under Subdivision (a) (1) (ii). Also, pursuant to 24 CFR section 576.21(a)(3), the 10% limitation on supervisory staff only applies to supervisory Operations staff and not to supervisory staff for Essential services, Homeless prevention or Renovation, Conversion, or Major rehabilitation. The federal ESG regulations do not currently impose a limitation on supervisory staff costs for these activities.

Subdivision (a) (1) (iv-vi) is a simply a reference to the federal ESG statute inserted in the State regulations to remind applicants and State recipients that FESG funds for Eligible activities are subject to continued use requirements. These requirements are not restated in the State regulations due to their length.

Subdivision (a) (1) (vii) sets forth the requirement to establish rules for participation in Client housing, including the maximum consecutive number of days during which a client is Eligible to occupy the housing; the policy for termination of Client housing prior to the end of the maximum stay; the process for Client appeal of that termination, and the requirement to conspicuously post the rules of occupancy at the housing facility. The Department feels that these requirements are necessary to help ensure that facilities funded with FESG dollars are open and operated on a fair basis. Of course, the requirement to post rules presumes that all Clients can read; but it also serves to put homeless service providers on notice that they must establish basic rules of operation, which should also be verbally reviewed with the Client during the intake process.

Subdivision (a) (1) (viii) requires that an applicant or a State recipient providing Client housing have a process for Program evaluation. It is important that organizations have some mechanism in place for evaluating the quality and effectiveness of the activities funded with FESG dollars. Evaluating a Program's success, strengths, and challenges leads to further improvements to the Program and better outcomes for the Client; however, because of differences among Programs in the homeless subpopulations served, services provided, and staffing or other resources available for Program evaluation, the Department will not mandate that specific evaluation procedures be followed by each Program, only that organizations applying for and receiving FESG funds demonstrate that they have a process for Program evaluation.

Subdivision(a) (1) (ix) allows Emergency shelter providers to reserve beds in the shelter in exchange for payment vouchers from some public or private funding source as long as no beds are reserved after sundown for payment. The purpose of this is to help ensure that Emergency shelter beds are available when needed, rather than held empty for monetary gain.

Subdivision (a) (1) (x) authorizes rent in Transitional housing but limits the amount charged to Transitional housing Clients, and requires that part of the rent be set-aside for permanent housing assistance for the Client. The State FESG regulations must clearly state that rent is allowable for Transitional housing since it is not allowable for Emergency shelters funded with FESG funds in light of subdivision Section 8406 (b) (1) (ii) which prohibits charging fees to Clients in Emergency shelter. The requirement of reservation of funds for permanent housing helps achieve the federal goal of moving homeless individuals and families toward independent living (24 CFR 576.1). Ten percent (10%) was selected as the minimum rent reservation, recognizing that rent must be kept low to be affordable to such Clients, and that most of the rent will be needed by the Transitional housing provider to pay the operating expenses of the facility. The separate accounting requirement protects Clients from inappropriate use of these funds. If rent reserved for a Client remains unused due to the absence of that Client for a year or more, monies set aside for permanent housing for that client shall be used to assist another Client in moving to permanent housing. This provision mirrors the EHAP regulations, and is necessary to deal with situations where rent money set-aside for permanent housing is not used by the Client for which the money was originally setaside.

Subdivision (a) (1) (xi) helps clarify the distinction between Emergency shelter and Transitional housing. It is standard practice among Transitional housing providers that Transitional housing offer supportive services with a length of stay of up to two years in order to help a Client receive the services and time needed to address the root causes of their homelessness and successfully move on to permanent housing. This section also identifies the types of supportive services to be offered in conjunction with Transitional housing. To address the federal goal of helping people return to permanent housing as soon as possible, the latter subparts require that funds be set-aside from rent paid to Transitional housing providers to help Clients return to permanent housing, and that every Client be provided placements to permanent housing.

Subdivision (a) (1) (xii) is a clarification of HUD's requirement at 24 CFR section 576.21(b) which requires that FESG funds used for Essential services be "new service[s] or a quantifiable increase in the level of services above that which the unit of general local government...provided with local funds during the 12 calendar months immediately before the grantee or State recipient received initial grant amounts". These regulations clarify that "services provided with local funds" is interpreted to mean services funded with local government funds. This interpretation is current practice in the FESG program. Furthermore, this provision interprets HUD's phrase "during the 12 calendar months immediately before the grantee or State recipient received initial grant amounts" to mean twelve calendar months from the anticipated date of the FESG award letter. In order for applicants and the State to determine whether 24 CFR 576.21(b) can be or has been complied with, a common date is needed in order to determine what twelve calendar months constitute "the 12 calendar months immediately before the grantee or State recipient received initial grant amounts". The Department chose to tie this date to the anticipated date, (by month), of the FESG award letter, because this date is published annually in the FESG NOFA and application. Because the Department

cannot determine on an annual basis when the State will receive its ESG allocation from HUD, (due to delays in the federal budget process), or when a State recipient will request and receive its initial Grant funds, it is best to establish an anticipated date of the award letter for purposes of complying with the requirements of 24 CFR 576.21(b).

Subdivisions (a)(1)(xiii) through (a)(1)(xv) are merely references to more detailed sections in the regulations pertaining to Homeless prevention activities, leasing or renting rooms with vouchers, and Capital Development activities. They serve as a reminder to the reader to consult these sections when undertaking these activities.

Subdivision (b) lists activities for which FESG funds cannot be used. Some of the items are listed to clarify interpretive guidance received from HUD. Other items are specifically prohibited by the Department absent any statutory or regulatory authority from HUD to the contrary. Clearly identifying ineligible costs in the FESG State regulations assists applicants in planning their Programs to ensure the appropriate and effective use of FESG funds.

Subdivision (b) (1) (i) prohibits the use of radios, televisions, or other appliances or equipment for recreational purposes. Recreational equipment is not an effective and efficient use of these public funds. Annually, an estimated 361,000 people in California experience at least one episode of homelessness. In this time of urgent need for emergency housing, public monies should be used to meet the basic shelter and service needs of the community. Recreational equipment can be purchased with private funds, such as donations.

Subdivision (b) (1) (ii) ensures that occupancy fees charged to Clients of Emergency shelters cannot be paid for with FESG funds. By its very nature, emergency shelter is generally free, and no one can be denied access due to an inability to pay. Where for some reason this is not the case, or where a shelter provider may attempt to pass such costs on to the Department, the regulations must clearly state that FESG funds cannot be used to pay Client fees or Client rent or lease charges for Emergency shelter.

Subdivision (b)(1)(iii) prohibits the use of FESG funds for offsite costs, special requirements or assessments, or anything more than is directly necessary for the development of Emergency shelter or Transitional housing. The Department feels that, given the scarcity of FESG funds, these funds should not be used for the indirect costs associated with developing or operating Emergency shelter.

As with the above, site improvements beyond those directly necessary for the development or operation of Client housing or services are an inefficient use of FESG funds, (Subdivision (b) (1) (iv)).

Subdivision (b)(1)(v) prohibits the use of FESG funds to finance foster homes and other emergency housing for youth who are not homeless but who have separated from their families due to a court or administrative order. FESG funded facilities are not intended to be used by the courts as a means of housing youth who are wards of the court. FESG

funded facilities are not to be treated as housing for this population and this prohibition will prevent misuse of these facilities in this manner.

Subdivision (b) (1) (vi) prohibits acquisition with FESG funds. This is a consistent with the federal regulations which permit only Renovation, Major rehabilitation, or Conversion, (24 CFR section 576.21(a)(1)), and is stated this way to give applicants some clarity regarding what is not an Eligible Capital Development cost.

Subdivision (b) (1) (vii) prohibits new construction activities with FESG funds. This is a consistent with the federal regulations which do not state that new construction is eligible for funding (24 CFR section 576.21(a)(1)), and is stated this way to give applicants some clarity regarding what is not an Eligible Capital Development cost.

Subdivision (b) (1) (viii) prohibits the use of FESG funds for predevelopment activities. Predevelopment activities, although necessary to any Capital Development project, do not always result in a project moving forward to completion. In some cases, the outcome of a predevelopment activity leads a developer to decide not to move forward with the project. Since FESG resources are scarce, the Department feels that it is more efficient and effective to spend these funds on projects that have moved beyond the predevelopment stage.

Subdivision (b) (1) (ix) prohibits the use of FESG funds for property clearance or demolition. This activity is prohibited for the same reasons cited in (b) (1) (viii) above. It is listed separately for purposes of clarity.

Subdivision (b) (1) (x) prohibits the use of FESG funds for persons who are not homeless except when providing Homeless prevention activities. This is consistent with the general statutory requirement that ESG funds be used to assist the homeless, (42 USC 11374). This requirement is stated in the State regulations in the form of a prohibition in order to enhance the reader's clarity and understanding.

Subdivision (b) (1) (xi) prohibits the use of FESG funds for the costs of operating a telephone hotline. Telephone hotline costs have been an Eligible cost under the State FESG program on the basis that it is a typical Operations cost for some shelters. However, because the federal rules require that persons who receive ESG funded services be homeless or at risk of homelessness, the current State program requires that applicants requesting funds for telephone hotline services demonstrate that these services result in hotline callers utilizing a shelter or transitional housing facility

The Department has concluded that tracking, and assigning a worthwhile dollar value to, the percentage of calls a telephone hotline receives which result in the use of the hotline's emergency housing facility has been a difficult task for both the providers of hotline services who request funds for these services, as well as for the Department; therefore the Department is discontinuing the practice of funding telephone hotlines because it cannot adequately fund the activity on this basis alone. However, there are many other FESG eligible costs for which organizations with telephone hotlines have successfully secured

State FESG funds, such as costs for security, Essential services, shelter utilities, repairs, rent, food, furnishings, and administration.

Subdivisions (b) (1) (xii) and (b) (1) (xiii), (staff recruitment or training, and costs associated with advocacy, planning, or fundraising), are prohibited because they are not direct costs of providing Operations, Essential services, Homeless prevention, Renovation, Major rehabilitation, or Conversion activities They are beyond the scope of what HUD intends to be Eligible pursuant to 42 USC section 11374 and 24 CFR section 576.21.

Subdivision (b) (1) (xiv) is intended to remind FESG applicants that there are restrictions on the type of activities and the amount of funds that are allowable as administrative costs. This subdivision references other sections of the State regulations that discuss this issue.

As the FESG program operates, specific questions and issues will arise as to what are Eligible and ineligible costs. Subdivision (b) (1) (xv) allows the Department to identify in the NOFA additional costs that may be an inappropriate or inefficient use of funds.

To prevent violation of 24 CFR 576.23, subdivision (b) (2) prohibits State recipients from requiring Clients to participate in religious or philosophical rituals, services, or meetings in order to receive housing or services. This serves to remind applicants and State recipients of the basic prohibition against religious discrimination.

Subdivision (b) (3) requires that any buildings for which FESG funds are used for Conversion, Major rehabilitation, or Renovation must meet local government safety and sanitation standards. This is a restatement of the requirement at 24 CFR 576.55, made so that all basic building code requirements for FESG are stated in one place, including the State law requirement discussed below.

Subdivision (b)(4) requires that Client housing not be provided in a structure which contains any of the conditions of a substandard building as set forth in section 17920.3 of the State Health and Safety Code. It also requires that Client housing comply with all State and local construction, maintenance, and occupancy standards. By imposing these requirements the Department is further clarifying and strengthening HUD's requirement at 24 CFR section 576.61 that grantees are responsible for ensuring that Emergency shelter Grant amounts are administered in accordance with other applicable laws. It is necessary to extend these compliance requirements to other FESG activities besides Emergency shelter and Transitional housing because Client contact also occurs within Homeless prevention programs, and programs wherein FESG funds are paying only for Essential services. Despite good intentions to meet urgent housing needs, providing Client housing in dilapidated buildings potentially endangers Clients.

Subdivision (b) (5) prohibits the conditioning of shelter on the receipt of payment from the Client, and the denial of shelter and services due to an inability to pay. This is necessary to ensure that those that need Emergency shelter can receive it. Pursuant to

Section 8406 (a) (1) (ix) of the regulations, providers can still reserve beds for payment as long as they are filled by sundown and not held empty overnight when someone else may be waiting for a bed

Section 8407 Homeless Prevention Activities

Subdivision 8407(a) is a general reference to the federal requirements governing Homeless prevention activities. It serves as a reminder to applicants and State recipients that these activities are governed by certain federal rules as well as the State regulations.

Subdivision 8407 (b) is a restatement of the federal requirement restricting the Department to spending no more than 30% of the total FESG allocation on Homeless prevention activities. This is a general reminder to applicants that there will be fewer Homeless prevention awards made compared to other FESG Eligible activities due to this federal restriction.

Subdivision 8407 (c) establishes FESG program parameters that must be followed by FESG State recipients when distributing Residential Rental Assistance to Clients. Such assistance is intended to aid people in accessing and retaining permanent housing.

Subdivisions 8407(c) (1) and 8407 (c) (2) set strict limits on the payment of rent in arrears and initial rent ensure that FESG funds are used efficiently and effectively when needed to prevent homelessness. The limitations established restrict such use to emergency cases when they are absolutely needed by the Client to prevent episodic homelessness, and when no other resources are available to the Client. The limitation of one payment every two years also helps ensure the efficient use of funds to meet the widest need, not just to assist a few people with chronic housing problems. Homeless prevention funds are not intended to be ongoing subsidies for Clients. These requirements are also consistent with the requirements of 42 USC section 11374(a) (4), and are stated as such in the State regulations to provide applicants and State recipients with greater clarity.

Subdivision (c) (3) and (c) (4) requires a separate accounting and interest credit for rental assistance funds. This is necessary for the clear tracking and monitoring of these funds by the State recipient. It will assist the State recipient in operating a fiscally responsible disbursement and maintenance procedure for these funds.

Subdivision (c) (5) requires a State recipient to verify that a rental assistance Client be able to make their regular monthly rental payment. This ensures that FESG rental assistance funds are used efficiently and effectively. If the Client cannot afford the regular monthly rent payments, emergency rent assist will be of little long-term benefit. Pursuant to 42 USC section 11374 (a) (4) (C), Homeless prevention funds are intended to assist people with housing that they can maintain.

To ensure that rental assistance funds are used for their intended purpose, subdivision (c) (6) requires that rental assistance funds be distributed directly from the State recipient to the landlord.

Subdivision (c)(7) (i) requiring written determinations of the eligibility of a Client for assistance is also necessary to ensure that rental assistance funds are used for their intended purpose.

Subdivisions (c)(7)(ii) and (iii) require State recipients to provide information to Clients and landlords to assist the Client and the landlord in maintaining a good relationship so that the Client may remain permanently housed, which is the ultimate goal of Homeless prevention funds.

42 USC 11374 (a) (4) permits FESG funds to be used for utility assistance in order to avoid utility shutoff. Such assistance is intended to aid people in accessing and retaining permanent housing. Subdivision (d) establishes FESG program parameters that must be followed by FESG State recipients when distributing utility assistance funds to Clients. These regulations were put in place to help ensure the efficient and effective use of FESG funds for utility assistance.

Subdivision (d) (1) states that the payment of utility assistance shall not exceed three months past due utility payments plus a reasonable late charge. Three-months past due assistance is the point at which the majority of utility companies surveyed on this point issue shutoff notices; therefore it is reasonable to offer to pay up to three months past-due utility bills, plus a reasonable late charge, in order to help a household avoid utility shutoff.

Subdivisions (d) (1) (ii) through (d) (1) (iv) set strict limits on the payment of utility assistance to ensure that FESG funds are used efficiently and effectively when needed to prevent homelessness. The limitations established restrict such use to emergency cases when they are absolutely needed by the Client to prevent episodic homelessness, and when no other resources are available to the Client. The limitation of one payment every two years also helps ensure the efficient use of funds to meet the widest need, not just to assist a few people with chronic housing problems. Homeless prevention funds are not intended to be ongoing subsidies for Clients.

Pursuant to 42 USC section11374 (a)(4), subdivision (e) clarifies that State recipients may provide up to three months of initial rent and/or utility assistance funds to Very-low income persons being discharged from publicly funded institutions or systems of care. A total of three months worth of assistance is an appropriate amount of assistance to provide since persons being discharged from public institutions may need more time to stabilize their income compared to homeless persons who have not been institutionalized and have had access to employment or public benefits.

Section 8408 Leasing or Renting Rooms with Vouchers

Section 8408 details the requirements for using FESG funds for vouchers for temporary housing. Subdivision (a) is necessary to clarify where vouchers can be used, and attempts to identify various types of housing structures that a Client might utilize for temporary housing.

In rural areas in particular, there may be few motel rooms or other types of housing available for rent, so subdivision (b) adds that vouchers may be used for rental fees for spaces in recreational vehicle parks, camping areas, and the like. This provides another viable option for temporary housing.

Subdivision (c) requires that rent payments made with vouchers must be at a rate that is reasonable based on local market conditions. This requirement is necessary to ensure the efficient use of FESG funds for vouchers. Rent charged to voucher holders shall not exceed market rent for comparably sized units or spaces.

Subdivision (d) requires that vouchers must only be used for temporary housing located in an Eligible City that is in the county where the FESG funds have been awarded, or in an unincorporated area of the Eligible county in which the funds have been awarded. One Eligible City may not have temporary housing vacancies at a particular point in time. This provision enables the State recipient to provide vouchers for temporary housing located in another Eligible City within that county. This restriction is necessary to ensure that emergency housing vouchers are not used to try to permanently relocate homeless persons now living in one county to other counties. It is not meant, however, to exclude Eligible counties from providing vouchered housing in unincorporated areas of their county rather than in an Eligible City in the county; therefore, this subdivision also permits Eligible counties to provide vouchers for temporary housing located in unincorporated areas of their county.

Subdivision (e) restricts temporary housing secured with vouchers to occupancy of six months or less by a homeless person. This restriction is necessary to promote the efficient use of FESG fund for vouchers. It is necessary to restrict the amount of time one household may utilize a vouchered unit in order to maximize the number of households that can be reasonably assisted with vouchers. In addition, this six-month occupancy limit is consistent with the occupancy limit for Emergency shelter. Vouchers are typically used to provide Emergency shelter, and not Transitional housing which has a longer length of stay.

Section 8409 Renovation, Conversion, and Major Rehabilitation

42 USC section 11374 (a) (1) permits the use of FESG funds for the Renovation, Major rehabilitation, or Conversion of buildings to be used as Emergency and Transitional housing. Capital Development activities offer challenges and opportunities that require clear definitions in the regulations regarding under what circumstances FESG funds for

these activities will be provided in order to ensure the efficient and effective use of FESG funds

Subdivision (a) requires that the Grant for these activities not exceed the maximum Grant amount specified in the annual NOFA. Because the ESG allocation is subject to annual adjustments by Congress, it is necessary to have the flexibility to set the maximum Grant amount in the NOFA

Subdivision (b) is a restatement of the FESG-eligible Capital Development activities, and delineates some of the specific costs that make up these activities.

Subdivision (c) is a reminder that the ineligible costs listed in Section 8406(b) are also ineligible when they are paid for with FESG funds in conjunction with a Renovation, Conversion, or Major rehabilitation project

Subdivision (d) requires that funds for Renovation, Conversion, or Major rehabilitation activities shall be in the form of a forgivable deferred loan. Capital Development activities typically involve large sums of money and are complex in nature. For this reason, forgivable deferred loans, rather than grants, are necessary in order for the Department to establish a security interest in the property. With a security interest, the Department can take possession of the property if the project is not completed or used for Emergency housing for the required period of time. This is necessary for the efficient and effective use of FESG funds. Once the project is completed and used as required, the deferred interest on the loan is forgiven and the loan converts to a Grant.

Subdivision (e) requires that the term of a Renovation, Conversion, or Major rehabilitation Standard Agreement is 24 months from the effective date of the contract. This is not inconsistent with HUD's requirement at 24 CFR 576.35(a)(2)(ii) that "each State recipient must spend all of its grant amounts within 24 months of the date on which the State made the grant amounts available to the State recipient". Section 8412 of the proposed regulations also clarifies that approved project activities for Renovation, Conversion, or Major rehabilitation shall be completed within 24 months of the effective date of the Standard Agreement.

Subdivision (f) provides the necessary standards against which the feasibility of a proposed Capital Development project is measured by the Department. Any such standards of review must be included in the regulations in order to ensure that the review process is open, fair, and competitive.

The reasons for the specific eligibility standards established in the regulations are as follows:

(1) If the project appears infeasible and not ready-to-go because of the project's legal status, lack of financing, no or low cash flow, technical infeasibility, or vague or impractical schedule, it would be inappropriate for the Department to encumber funds for this project.

- (2) FESG funds should be used to meet basic Emergency and Transitional housing needs of Clients not to include any extravagant materials, or materials beyond the scope of what is needed to provide durable, safe, and sanitary housing.
- (3) To help ensure that FESG funds will be effectively used to address Emergency shelter and Transitional housing needs, the site control must be sufficient and demonstrate that the project can be operated for at least the required period of continued use as a facility for the homeless pursuant to the requirements of 42 USC section 11375(c). The requirement at Section 8409 (f) (3) of these regulations is also necessary to protect the Department's security interest in property which is financed with public funds; so that that the property may be sold and the funds returned to the Department if there is misuse.
- (4) To ensure efficient use of FESG funds, the construction of the project must be completed within the term of the Standard Agreement. Otherwise the FESG funds will have to be returned to the Department, with interest.
- (5) The success of any construction project depends in large measure on the abilities of the project's management team. In all of its housing programs, the Department typically assesses this capability before deciding whether to fund a project to help ensure the effective use of FESG funds to meet the housing need.

Section 8410 Match Requirements

Section (a) restates for purposes of clarity the Department's responsibility to provide HUD with documentation of ESG matching funds. The obligation to provide HUD with match documentation rests first and foremost with the State; therefore the Department's intention is to try to satisfy this requirement by providing its own documentation of State funding for homelessness available to meet this requirement, (subdivision (b)). However, in the event that HUD increases its match requirement, or State homeless funds decrease, the Department will notify applicants in the applicable FESG NOFA of any match documentation needed from them so that the match requirement can be met, (Subdivision (c)).

In past years, the Department has required that applicants provide all of the required match documentation. Providing documentation in the manner proposed by these regulations will make it administratively easier for HUD, the Department, and FESG applicants to ensure that the match obligation is met. This, in turn, will help reduce the number of match documentation mistakes made by applicants which negatively impact their eligibility for FESG funds.

Section 8411 Grant Selection Process

In order to ensure that the Grant selection process is open, fair, and competitive, it must be explained in the regulations. Section 8411 sets forth information on the Grant selection process.

Subdivision (a) is necessary to specifically inform applicants that only eligible applications timely received specifically in response to the applicable NOFA are those involved in the Grant selection process. This eliminates questions about applications otherwise received and not reviewed.

Subdivision (b) spells out the Grant selection criteria which must be specified in the NOFA. These criteria relate to the applicant's capability to provide the services for which they are requesting funds; the impact and effectiveness of the Client housing provided and proposed to be provided by the applicant, and the cost efficiency of the proposed use of Grant funds. The point scores listed for each of the individual rating factors reflect the relative importance of each of the factors. Each rating factor corresponds to specific application questions. The Department will assign a particular point score to each application answer by looking at the relative merit of the individual answer to each question.

Scoring each Program of a multi-site or multi-Program application separately and averaging the scores for each rating factor to arrive at a final score for the application is the administratively easiest way to score multi-Program applications while accounting for differences between each Program which should impact the final score. The Department considered weighting the scores for each Program proportionate to the amount of funds requested for each Program within the application. However, because each application question is also weighted differently proportionate to the total amount of points available for the application, it is not an efficient use of the reviewer's time to have to calculate proportionalities within each rating factor for multi-Program applications while reviewing and scoring multiple applications in their entirety.

Subdivision (b) (1) sets forth rating factors which address the applicant's capability of achieving the activities and results proposed in the application.

Subdivisions (b) (1) (i) through (b) (1) (ii) address the number of years of experience possessed by the applicant providing housing and services for the homeless, including experience both within the proposed Program and experience with other similar homeless programs. Subdivision (b) (1) (v) looks at the number of years of experience possessed by individual key staff members of the Program, (executive director, manager / supervisors, and counselors /case managers), working in the Program. The number of years of experience was chosen as one way to objectively and easily determine which applicants were most qualified. Programs with more years of experience will receive more points for these rating factors.

Subdivision (b) (1) (iii) looks at the process used by the organization to evaluate the Program. Evaluating a program's success, strengths, and challenges leads to further improvements in the program and better outcomes for the Client. Points will be awarded for this factor based on the frequency of evaluation, the degree of involvement of Clients and staff in the evaluation process, and the impact of the evaluation process on the Program.

Subdivision (b) (1) (iv) evaluates the applicant's financial capability by looking at the applicant's experience administering other federal housing grants, including but not limited to, other FESG grants This is necessary to determine whether the applicant has the ability to comply with HUD's financial reporting requirements. Programs that have more experience administering federal housing grants will receive more points for this rating factor. Other factors relating to financial capability are discussed in subdivision (b) (3).

Subdivisions (b) (1) (vi) examines the proposed ratio of staff to Clients. The more time and attention Clients receive from Program staff, the more likely those Clients will succeed in the Program; therefore, applicants with a higher staff to Client ratio will receive more points for this rating factor.

Subdivisions (b) (1) (vii), (b) (1) (viii) and (b) (i) (ix) examine the applicant's previous performance with FESG Grants, including whether the applicant has any unresolved monitoring findings or concerns from any FESG grants awarded in the previous four years, whether the applicant has complied with reporting requirements for FESG Grants awarded in the previous four years, and whether the applicant has obligated and expended funds from previous FESG Grants in a timely manner. Previous performance in the recent past is one measure for understanding the quality of administration of the applicant's current Programs, and of forecasting applicant capability in the coming years. Programs that are expending their current FESG funds in accordance the timeframes set forth under law, are meeting their FESG reporting requirements, and have no unresolved findings and concerns from previous FESG Grants, will receive more points for this rating factor.

Subdivision (b) (2) examines the impact and effectiveness of the housing and services provided, and proposed to be provided, by the applicant. These factors further examine what FESG funds will be supporting, and to what extent these activities lead to a reduction in homelessness

Subdivision (b) (2) (i) looks at the number of services offered to homeless persons in the Program. Support services, including but not limited to, life-skills training, mental health counseling, addiction recovery services, employment services, and housing placement services are critical to helping a person exit homelessness; therefore, it is important that FESG funds go to support these services. Furthermore, the range of services a Program currently provides is usually an indication of the applicant's understanding of the particular needs of a homeless individual, and the ability of the applicant to design and operate a Program to address those needs. Although the number of services offered by a Program is not necessarily an indication of Program quality, it is one objective way to distinguish between Programs.

People who are homeless generally have barriers which impact their ability to receive services. Subdivision (b) (2) (i) also encourages applicants to make their services accessible to all homeless persons. The accessibility of services for purposes of this rating factor means transportation to off-site services based on the needs of the individual Client, accommodations for Clients with disabilities, and services that address the

linguistic needs of the Clients. Transportation related barriers, disability related barriers, and language barriers are common barriers to services for most homeless people. Applications that demonstrate the accessibility of Program services will receive more points than applications that do not demonstrate service accessibility.

Subdivision (b) (2) (ii) looks at a Program's success rate in placing Clients into housing after working with them in the Program. The Department recognizes that, depending on the degree of barriers an individual has when entering a Program, placement into temporary housing upon exiting the Program may be a successful Program outcome for that person; therefore, points will be awarded for a Program's overall placement rate into emergency, transitional and permanent housing after Clients have completed the Program.

Because of general differences in length of stay or services provided among different types of Client housing, when awarding points for this rating factor Homeless prevention Programs will be compared with one another, Transitional housing Programs will be compared with one another, overnight Emergency shelter Programs will be compared with one another, Temporary Housing voucher Programs will be compared with one another, Day Center Programs will be compared with one another, and other non-housing FESG-eligible Programs will be compared with one another.

There will be differences among Programs of the same Client housing type that may contribute to differences in Program success rates; however, it is administratively burdensome to separate Programs into more subgroups than just Client housing type for purposes of scoring this rating factor. It would also be difficult for the Department to objectively determine, for example, that one homeless subpopulation in Emergency shelter is harder to serve than another homeless subpopulation in Emergency shelter when awarding points for this rating factor.

Subdivisions (b) (2) (iii), (b) (2) (iv) and (b) (2) (v) look at the Program's success rate in the last twelve months for assisting Clients to obtain or retain employment; obtain other income such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or county general assistance; and to stabilize a mental illness or chemical addiction for a minimum of three months. Increasing or stabilizing an individual's income source(s) and addressing any mental health or chemical dependency problems is critical to assisting a person to obtain and retain housing.

Applicants will be awarded points based on the success rate of their Program for these factors; however, because of general differences in length of stay or services provided among different types of Client housing, when awarding points for this rating factor Homeless prevention Programs will be compared with one another, Transitional housing Programs will be compared with one another, overnight Emergency shelter Programs will be compared with one another, Temporary Housing voucher Programs will be compared with one another, and other non-housing FESG-eligible Programs will be compared with one another.

There will be differences among Programs of the same Client housing type that may contribute to differences in Program success rates; however, it is administratively burdensome to separate Programs into more subgroups than just Client housing type for purposes of scoring this rating factor. It would also be difficult for the Department to objectively determine, for example, that one homeless subpopulation in Emergency shelter is harder to serve than another homeless subpopulation in Emergency shelter when awarding points for these rating factors.

Subdivision (b) (2) (vi) addresses the applicant's participation in the planning process for the community-wide continuum of care, EHAP Local Emergency Shelter Strategy (LESS), or other homeless housing and supportive services plan. Successful strategies to reduce homeless happen through coordinated efforts at the local level; therefore it is important that State and federal resources for homelessness support these local efforts. Hence, applicants who are participating in their local homeless planning process as evidenced by documentation from this planning process will receive more points than applicants who are not participating.

Subdivision (b) (2) (vii) examines the community's need for the proposed Program by looking at how a local homeless planning document has prioritized the type of Client housing being provided by the applicant. The intent of this rating factor is not to look at the priority of individual Programs in the plan, but to look at the relative need for Emergency, Transitional, Homeless prevention or other FESG-eligible activities being provided by the Program as evidenced by documentation from a local homeless housing and supportive services plan provided by the applicant with its FESG application. Applicants whose Client housing-type addresses higher needs as evidenced by the homeless plan will receive more points for this rating factor. For purposes of this rating factor, depending on the type of data available, Emergency overnight shelters, Day Centers, and Temporary housing provided with vouchers may be considered together as Emergency shelter when comparing a community's need for Emergency shelter and its need for Transitional Housing, Homeless Prevention, and FESG-eligible non-housing services for homeless persons.

Subdivision (b) (3) looks at several different factors related to the cost efficiency of the proposed Project. It is important to distribute FESG funds to those applicants who need the funds. Subdivisions (b) (3) (i) and (b) (3) (ii) addresses the applicant's need for FESG funds as it relates to Program costs.

Subdivision (b) (3) (i) examines the applicant's need for FESG funds when comparing the ratio of FESG funds to other sources of funds in the applicant's proposed Program budget. Determining how much of a Program budget comes from FESG funds gives the Department an understanding of the applicant's financial need for these funds. Applicants with more financial need, demonstrated by having a higher percentage of FESG funds comprise their Program budget, will receive more points for this rating factor.

Subdivision (b) (3) (ii) also examines the applicant's need for funds by looking at the specific consequences to the Program if State FESG funds are not provided. As with the

above rating factor, Programs for whom the consequences of not receiving FESG funds are more severe will receive more rating points for this factor.

In addition to awarding FESG funds based on the applicant's need for funds, it is also important to award funds based on the cost efficiency of the proposed project. Subdivisions (b) (3) (iii) and (b) (3) (iv) examine the cost efficiency of the proposed use of FESG funds

Subdivision (b) (3) (iii) examines the relative cost efficiency of the proposed use of FESG funds by comparing similar Programs with one another. Specifically, the Department will look at the relative cost per bed per month when comparing overnight Emergency shelter Programs with one another; Transitional housing Programs with one another, and Temporary Housing voucher Programs with one another. The relative cost per household served per month will be used to compare Homeless prevention Programs with one another, Day Center Programs with one another, and other FESG-eligible non-housing programs with one another.

Comparing similar Programs with one another for the purpose of determining cost-efficiency is a significant change from previous FESG funding rounds where Emergency overnight, Transitional, voucher, Homeless prevention, and Day Center Programs were all compared with one another to determine and score relative cost effectiveness for every eligible application in a funding round. This led to unfair outcomes in the scoring of the cost-effectiveness question because the numbers served and costs in each Program were due to differences in the type of Client housing provided.

While a completely "apples to apples" comparison under the proposed system may not be possible because of bed capacity or supportive service similarities that may exist between individual Programs of different housing types, the Department hopes that doing an analysis of cost efficiency among Programs of the same housing-type will lead to more valid scoring outcomes for this question. Programs that are more cost efficient will receive more points for this section.

Subdivision (b) (3) (iv) looks at an applicant's level of coordination with other organizations to operate the Program as demonstrated by the number of letters of support the applicant has from other organizations, and the level of coordination described within each letter. Coordination among organizations brings down Program costs when one or more organizations provide Program services to the Clients of the applicant thereby reducing or eliminating the need for the applicant to provide these services themselves, resulting in non-duplication of services. If the partner organization is particularly efficient and effective in providing these services, then this should also be encouraged by rewarding collaboration by the applicant. Applicants that demonstrate a high degree of collaboration will receive more points for this section.

Subdivision (b) (4) outlines the basic issue areas for which State Objective points will be awarded. Applicants who demonstrate that their proposed Program addresses one or more

State objectives will receive State Objective points. The basic issue areas for the award of State Objective points are as follows:

(i) Imbalance in the organizations funded in prior years, where points will be awarded to applicants in the current funding round who were unsuccessful in securing FESG funds in the previous funding round.

This will enable the Department to boost the scores of applicants in the current funding round who applied in the previous funding round and did not get funded. This will help ensure that the same organizations are not funded every year.

(ii) Federal funding priorities as publicly announced by HUD;

This will assist the Department in using its FESG funds to support Programs that are addressing current federal public policy objectives concerning homelessness.

(iii) State funding priorities as publicly announced by the Governor.

This will assist the Department in using its FESG funds to support programs that are addressing State funding priorities concerning homelessness.

(iv) Housing and community development needs or objectives as identified in the Department's annual consolidated plan required by HUD;

This will assist the Department in using its FESG funds to support Programs that are addressing the Department's housing and community development objectives concerning homelessness as identified in the required annual consolidated plan which is subject to public hearings.

Because the specific details around public priorities that could be the subject of State Objectives may change from year to year, the Department will provide this detail to applicants in the annual FESG NOFA. The point scores awarded to each application for the State Objectives selected in any given year will depend on the relative merit of the response of the individual applicant.

Subdivisions (c) through (g) spell out the general process for awarding funds in descending rank order within each of the allocation set asides described in Section 8402. These provisions also address when applications will be partially funded rather than fully funded, and what will occur if there is a tie for the last amount of funds available within the allocation set-asides. These criteria are being used in order to make FESG program requirements compatible with the EHAP program.

Within each of the set-asides, in the event of a tie for applicants in the lowest-ranked position to be funded, before continuing the award process the Department will evaluate the innovative factors among the tied applications in order to break the tie. This is necessary for the fair and efficient completion of the award process.

Section 8412 State Recipient Contract Requirements

24 CFR 576.61 requires States to ensure that State recipients receiving FESG funds carry out their Programs in compliance with the FESG regulations and all other applicable laws. In order to do this, the State must enter into a legally binding contract with the State recipient to enforce these requirements. The details of this contract are included in the regulations to provide clarity to the Department and the State recipient as to what this agreement will entail.

Section 8412 also establishes a process whereby the State recipient contract is written, and identifies the information to be included in the contract and the related timeframes. These requirements reflect standard State and Department contract requirements necessary for clarity in the terms and conditions of the Standard Agreement. The timeframes for the commencement of the Grants were established by the Department to help ensure the timely commencement of projects. The State recipient is given more time to begin Capital Development activities than given for Operations, Essential services, or Homeless prevention activities because of the complexity of Capital Development activities and the possibility of unexpected delays. However, as discussed earlier, State recipients should have demonstrated readiness to complete the project development within the specified time frames.

Section 8413 Procedures and Requirements for Procuring Contracts for Services or Materials under a Capital Development Contract

Procedures for procuring contracts using Capital Development forgivable deferred loans are needed in order to ensure the efficient and effective use of FESG funds. Since the Department is ultimately responsible for the efficient and effective use of FESG funds, it is reasonable to review these subcontracts to ensure that Capital Development funds are being spent efficiently and effectively, and to help ensure a fair, open, and competitive process.

The Department has concluded that the review of proposed contracts in excess of \$25,000 is necessary (Subdivision (b)). Past experience with other programs in the Department has shown that this is the threshold where the monetary risk becomes great enough to warrant Department review of all contracts to ensure that all applicable procurement laws have been followed.

The requirement that records of the contracting parties shall be subject to audit for a period of six years from the execution of the Standard Agreement, (Subdivision (d)), is not inconsistent with 24 CFR section 576.61, 24 CFR section 576.65(a) and other federal requirements governing records retention.

The security requirements contained in Subdivision (e), (f), and (g) are reasonable given the amount of public funds to be expended and the complex nature of most Capital Development activities.

Section 8414 Requirements for Renovation, Conversion, or Major Rehabilitation Performed by the State Recipient

State recipients that perform labor or provide materials for Renovation, Conversion, or Major rehabilitation projects need some restrictions to prevent conflicts of interest or misuse of FESG funds. Section 8414 provides the minimum necessary restrictions in this regard to protect public funds from misuse without excessively regulating a State recipient's work. Payment of family members of the State recipient, its Governing Board, or its staff could easily be considered a conflict of interest. Written contracts are also required to prevent misuse of funds or other conflicts.

Section 8415 Budget Changes

The requirements of this section are within the scope of authority provided to the State pursuant to 24 CFR section 576.61. Such limits on budget changes are necessary to prevent a State recipient from obtaining approval of their application for specific Eligible activities through a competitive application process, and then frivolously changing the scope of the activity after they have been awarded the funds. These requirements are necessary to ensure a fair and open competitive process.

Subdivision (b)(1) through (b)(4) allows for budget changes in situations where the Clients served, project priorities, project criteria, project results, and project completion date has not substantially changed as a result of a change to the budget. Without the foregoing requirement, approving budget changes would create an unfair competitive application process. If the State recipient had initially requested funds for the items in the changed budget, the application might not have scored well enough to be funded.

Subdivision (b)(5), requiring written evidence documenting the need for the budget change, is necessary to avoid misunderstandings between the State recipient and the Department regarding the reasons for the change, and to prevent misuse of funds through the budget change process. Requiring the State recipient to demonstrate the availability of other funding to pay for items which have been totally eliminated from the FESG budget also helps the Department verify the integrity of the original request for funds, and ensure that the intent of the original proposal is met.

Subdivision (c) allows for budget changes where the change would not result in a decrease in benefits to the local Program.

Subdivision (d) requiring budget changes over 10% to be done through a contract amendment is standard FESG procedure necessary to ensure the contract between the Department and State recipient adequately regulates the use of FESG funds. Since the average FESG Grant award is \$100,000-\$200,000, a budget change which affects more than 10% of the awarded funds would substantially change the nature of the activities under the contract, necessitating a contract amendment.

Section 8416 Disbursement Procedures

This section merely lists for purposes of convenience and clarity the general rules pertaining to the disbursement of FESG funds under the authority vested in the State pursuant to 42 USC 11375.

Subdivision (a) clarifies that the Standard Agreement will identify the specific disbursement process for each State recipient, according to the types of funded activities and the term of the project.

Subdivision (b) provides discretion to the Department to require an escrow or other control account for Capital Development activity because this is an efficient method to ensure the appropriate use of Capital Development funds.

Subdivision (c) facilitates Department monitoring of State recipients and also reduces paperwork for disbursement requests. Due to staffing constraints it may be impossible to check every expenditure at the time the request for disbursement is submitted. This regulation allows the Department to expedite its approval of a disbursement request by relying on a State recipient's certification that the expenditures are appropriate. As long as the State recipient agrees to maintain the supporting documentation, the Department can request it at a later point in time for verification purposes. The six year retention period of supporting documentation is not inconsistent with other applicable federal reporting requirements.

Subdivision (d) is a restatement of the HUD requirement at 24 CFR 576.63 pertaining to the advancement of funds. It is restated in the State regulations for purposes of clarity and convenience.

Subdivision (e) authorizes the Department to establish other procedures necessary to administer the program. This allows for small procedural changes within the scope of the statute or regulations to be made as needed and required by the Department.

Subdivision (f) sets forth the consequences for misusing FESG funds so applicants and State recipients are put on notice of these consequences. These requirements are consistent with the requirements of 24 CFR 576.67.

Subdivision (g) requires that State recipients enter into a contract with the Department and meet all applicable environmental review requirements before incurring any costs under the FESG Grant. The Department will not pay for any costs that are incurred before the execution of the Standard Agreement. This is reasonable because the Department does not want the State recipient to incur costs under the FESG program if the State recipient has not demonstrated that it can comply with FESG requirements, and has not entered into a legally binding agreement with the Department to do so.

Subdivision (h) is necessary for uniform tracking of requested expenditures so that the Department can effectively and efficiently monitor State recipient compliance with FESG requirements, and can comply with all federal reporting requirements.

Section 8417 Reporting and Recordkeeping

For purposes of clarity and convenience, this section sets forth the State and federal reporting and recordkeeping requirements for the FESG program. Since the State has the ultimate responsibility for Grant administration pursuant to 24 CFR section 576.61, subdivisions (a), (b), and (c), requiring a written request for funds and a written detail of expenditures on forms approved by the Department, are necessary to help ensure that FESG funds are being spent appropriately. Subdivisions (d), (e), and (f) are required for the Department to accurately complete its annual reporting requirements for HUD's comprehensive plan so that it may continue receiving ESG funds pursuant to 42 USC section 11373.

As the new State FESG program operates, additional reporting requirements may be necessary to meet the State's reporting responsibilities to HUD. Subdivision (g) gives the Department the ability to respond to these demands.

Section 8418 Monitoring Grant Activities

Monitoring is necessary to ensure that public funds are appropriately expended. This section provides the minimum information necessary for State recipients to have notice of what will be monitored. The scope of individual monitoring visits may be different for each State recipient depending on the activities for which it has been funded. This section also states the consequences for falsifying records.

Section 8419 Audit Requirements

For purposes of clarity, this section restates the general federal audit requirement for the FESG program.

Section 8420 Sanctions

This section sets forth sanctions that the Department may impose upon a State recipient for failure to abide by federal or state laws or regulations governing the FESG program. For purposes of consistency and clarity, the Department has chosen to impose similar sanctions for failure to abide by state law or federal law as HUD permits the Department to impose pursuant to 24 CFR 576.67 for failure to abide by federal law.

Section 8421 Other Federal Requirements

For purposes of clarity and convenience, this section reminds FESG State recipients and potential State recipients that in addition to the requirements of these regulations, they must also abide by all applicable local, state, and federal laws.